

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

2:05CV654-F

United States District Court		District Court For the Middle District of Alabama
Name (under which you were convicted): <u>Albert Carter, Jr.</u>		Docket or Case No.: <u>CR. NO. 03-61-N</u>
Place of Confinement: <u>St Clair Correctional Facility</u> <u>1000 St Clair Road Springville, Alabama 35146</u>		Prisoner No.:
UNITED STATES OF AMERICA		Movant (include name under which convicted)

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: The United States District Court For The Middle District of Alabama
- (b) Criminal docket or case number (if you know): CR. NO. 03-61-N
- (a) Date of the judgment of conviction (if you know): A
- (b) Date of sentencing: August 7, 2003
- Length of sentence: 57 Months
- Nature of crime (all counts): Felon in possession of a firearms, have been found guilty of Attempted Murder, on about March, 11, 1983 in the Circuit Court of Tuscaloosa County, Alabama.
- (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? Felon in possession of a firearms.
- If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☒
- Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒No ☐

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The Court was without Jurisdiction to render the judgment or impose Sentence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): February 20, 2003 A Complaint was file Case NO. MO3-12-N that the defendant Albert Carter, possess a firearm, that is a .22 Caliber revolver, in and affecting Commerce after having been convicted of solicitation-murder, for which he was sentenced to a term of imprisonment for more than one year under the laws of the state of Alabama. that was A Frivolous Complaint, on February 27, 2003 said defendant was indicted for felon possess firearm after being convicted of Attempted Murder the defendant was denied equal protection and due process and was left without a proper Charge, and this Court is without the jurisdiction in this Case.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: I NEVER SAW the Complaint untill a year after I was convicted, I got in My state Disco-
very.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: Ineffective assistance of counsel:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Counsel was ineffective for not discussing the plea agreement with me, didn't object to the presentencing report calculations two-level upward adjustment because the probation officer believed the gun in question had been stolen. I was denied my right to a presentencing after requesting to have one. Counsel told defendant that he was going to do the federal sentence first and that was the only reason the defendant entered a plea of guilty.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Prosecutor Misconduct, there was NEVER a Complaint file in this Court under this conviction.(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): after being

arrested on a compliant file February 20, 2003 for felon in possess
a firearm after being convicted of solicitation - murder, without a
proper charge the government change the charge and took the
case before the grand jury to get an indictment, denied the defendant
due process and equal protection of law, and left this court
without proper jurisdiction to render judgment or to impose
the sentence in this case.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: I had not saw the
complaint untill February 2004

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: The Court Abuse's it Discretion, In that it over rule the defendant objection to stand by Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Court abuse it discretion that Counsel was ineffective as a matter of law, the defendant object to the presentence report calculations two-level upward adjustment because the probation officer believed the gun in question had been stolen the gun was not proper before the court and Counsel's was ineffective for Not objection, and the Court abuse's it discretion in over ruling his objection, ² the Court abuse it discretion in over ruling the defendant objection to the court appointing Mr. Van Heest as stand by Counsel, after the defendant stated that he didn't want him to represent him under NO Circumstances.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: this was raise in part but not the abuse of discretion was Not, but should have been raise by appeal Counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

N/A

N/A

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: *the defendant did not see a copy of the Complaint until a year after his conviction in this Court. the issue of abuse of discretion was before the Court in part, by say the statement was not proper before the Court and the Court over rule the defendant objection to the presentence report.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: Tiffany McCord

(c) At trial: Joseph P. Van Heest

(d) At sentencing: Joseph P. Van Heest

(e) On appeal: Jay Lewis

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: The Circuit Court, Troy, Alabama

(b) Give the date the other sentence was imposed: November 16, 2004

(c) Give the length of the other sentence: 99 years for Attempted Murder

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: The Court was without jurisdiction to render judgment to impose sentence, prosecutor misconduct, an abuse of discretion, ineffective assistance of counsel.
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on June 13, 2005

(month, date, year).

Executed (signed) on June 13, 2005 (date).

Albert Carter
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

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